

EXHIBIT 13

1 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
A Limited Liability Partnership
2 Including Professional Corporations
PAUL S. MALINGAGIO, Cal. Bar No. 90451
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DAVID A. DeGROOT, Cal. Bar No. 168073
4 ddegroot@sheppardmullin.com
Four Embarcadero Center, 17th Floor
5 San Francisco, California 94111-4109
Telephone: 415.434.9100
6 Facsimile: 415.403.6062

7 Attorneys for Plaintiff
CARSON INDUSTRIES, INC.

8
9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**
11 **SAN FRANCISCO DIVISION**
12

13 CARSON INDUSTRIES, INC., a South
Carolina corporation,

14 Plaintiff,

15 v.

16 AMERICAN TECHNOLOGY
17 NETWORK, CORP., a California
corporation, dba American Technologies
18 Network, American Technologies
Network, Corp., and ATN Corp.,
19

20 Defendant.

Case No. 3:14-cv-01769-NC

**DECLARATION OF RICHARD J.
BARRETT IN SUPPORT OF
PLAINTIFF'S MOTION FOR
SUMMARY ADJUDICATION**

Date: September 2, 2015

Time: 1:00 pm

Ctrm; D, 15th Fl., 450 Golden Gate Av., SF

21
22 I, Richard J. Barrett, declare as follows:
23

24 1. I am Executive Vice President of Carson Industries, Inc. ("Carson"),
25 plaintiff in this matter. I have held this position since before 2009, when Carson first sold
26 products to defendant American Technology Network Corp. ("ATN") and continuously
27 until the present. I have personal knowledge of the facts stated herein.
28

1 2. From my responsibilities as Executive Vice President, I have
2 knowledge of and help to oversee the record-keeping practices of Carson. Specifically, the
3 records attached hereto were kept in the ordinary course of Carson's business and either
4 created or filed contemporaneously with the receipt of information by Carson that is
5 indicated on each record.

6
7 3. True and correct copies of Purchase Order numbers 11542 and 11843
8 received from ATN are attached hereto as Exhibits 1 and 2, respectively. True and correct
9 copies of invoices sent by Carson to ATN are attached hereto as Exhibits 3 (for Inv. No.
10 3402) and 4 (Inv. No. 3478). ATN paid \$50,000 toward Invoice Nos. 3402 in February
11 2012 and Carson credited \$75,778.98 to ATN for returns of components from 327 other
12 kits.

13
14 4. True and correct copies of Packing Slip Nos. 11031 and 11024 are
15 attached hereto as Exhibits 5 and 7, respectively. A true and correct copy of Invoice No.
16 3245, the invoice for the goods shipped with Packing Slip No. 11031, along with Carson's
17 record showing payment of that invoice, is attached hereto as Exhibit 6. A true and correct
18 copy of Invoice No. 3237 for the goods shipped with Packing Slip No. 11024, along with
19 Carson's record showing payment of that invoice, is attached hereto as Exhibit 8.

20
21 5. Carson created a summary of its shipments of PVS-7D goggle kits to
22 ATN, returns from ATN, and Carson's re-shipments of returns to ATN after repair. This
23 summary was created from Carson's shipping and receiving records. A true and correct
24 copy of this summary is attached hereto as Exhibit 9.

25
26 ///
27
28

1 I declare under penalty of perjury of the laws of the United States that the
2 foregoing is true and correct. Executed on July 23, 2015, at Hilton Head Island, South
3 Carolina.

4
5 */s/ Richard J. Barrett*

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Richard J. Barrett
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Order Date 07/28/10

American Technologies Network Corp.1341 San Mateo Avenue
South San Francisco, CA 94080

EXHIBIT 1

Telephone: 650/989-5100

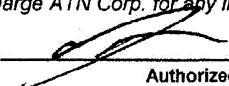
Vendor:Carson Industries Inc.
54 Saw Timber Drive
Hilton Head, SC 29926**Ship To:**Warehouse
ATN Corp
1341 San Mateo Ave
South San Francisco, CA 94080

Vendor	Vendor Fax Number	Vendor Telephone Number	Ship Via	F.O.B.	Payment Terms	
CARSIN	423/648-6626	423/648-6624	Best Way	SSF CA	Net 10 Days	
Buyer	Confirming To	Remarks	Freight	Tax	Full Terms and Conditions	
		Quote 10170	CIF	N	http://www.atncorp.com/po	
Line	Qty. Ordered	Unit of Measure	Your Item Number	Our Item Number	Unit Price	Extended Price
	Qty. Received	Qty. Open	Item Description		Date Required	
1	1000 0	EACH 1000	CK0720	COBDPVS7	599.450	599450.00
			Body: PVS-7, w/ Nylon Case, Accessories Pack, (no headset)		08/28/10	

ATN Corp./Buyer is the assured party under Open Cargo policy that covers all ATN Corp. insurable interests. By accepting this Purchase Order vendor/supplier agrees to all terms and conditions published on www.atncorp.com/po and will be responsible for any Excess Value Coverage. Please do NOT insure, do NOT declare value for insurance purposes or otherwise use carrier Excess Value Coverage on any shipments sent via Freight Collect on ATN Corp's account and/or sent on Vendor/Supplier account if Vendor/Supplier intends to charge ATN Corp. for any insurance coverage.

Print Date: 07/28/10 10:27 AM

Vendor Original


Authorized Signature

Page 1

C0159



Order Date 03/11/11

American Technologies Network Corp.1341 San Mateo Avenue
South San Francisco, CA 94080

Telephone: 650/989-5100

Vendor:Carson Industries Inc.
110 Nobel Court
Alpharetta, GA 30005**Ship To:**Warehouse
ATN Corp
1341 San Mateo Ave
South San Francisco, CA 94080**EXHIBIT 2**

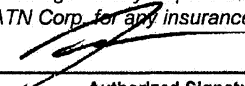
Vendor	Vendor Fax Number	Vendor Telephone Number	Ship Via	F.O.B.	Payment Terms	
CAR SIN	423/648-6626	404/550-4637	Best Way	SSF CA	Net 10 Days	
Buyer	Confirming To	Remarks	Freight	Tax	Full Terms and Conditions	
		Confirm Prices w/SO	CIF	N	http://www.atncorp.com/po	
Line	Qty. Ordered	Unit of Measure	Your Item Number	Our Item Number	Unit Price	Extended Price
	Qty. Received	Qty. Open	Item Description		Date Required	
1	10 0	EACH 10	A3256391 PVS Series 3x Afocal Lens	ACMPPVSL3A 03/11/11	325.000	3250.00

NonTaxable Subtotal	3250.00
Taxable Subtotal	0.00
Tax	0.00
Total Order	3250.00

ATN Corp./Buyer is the assured party under Open Cargo policy that covers all ATN Corp. insurable interests. By accepting this Purchase Order vendor/supplier agrees to all terms and conditions published on www.atncorp.com/po and will be responsible for any Excess Value Coverage. Please do NOT insure, do NOT declare value for insurance purposes or otherwise use carrier Excess Value Coverage on any shipments sent via Freight Collect on ATN Corp.'s account and/or sent on Vendor/Supplier account if Vendor/Supplier intends to charge ATN Corp. for any insurance coverage.

Print Date: 03/11/11 6:16 AM

Vendor Original


Authorized Signature

Page 1

C0161



110 Nobel Court
 Alpharetta, GA 30005
 Tel (770) 753-4403
 Fax (770) 753-4406

Invoice No. 3402

Page 1 of 1

*Shipping
 address:*

American Technologies Network Corp
 1341 San Mateo Ave
 S. San Francisco, CA 94080
 Phone: (800) 910-2862
 Fax: 650-875-0219

Ship Via: FEDEX Ground
Fob desc: ORIGIN

*Account
 address:*

American Technologies Network Corp
 1341 San Mateo Ave
 S. San Francisco, CA 94080
 Phone: (800) 910-2862
 Fax: 650-875-0219

Invoice Date	Due Date	Terms	Salesperson
12/17/2010	12/17/2010	See Comments	

Order Qty	Ship Qty	Part ID/Description	Rev	U/M	Unit Price	Extended Price
1,000	880	CK0720 PVS-7D Goggle Kit	G	EA	599.45000	\$527,516.00
Kit Contains:						
1 ea Rear Cover Assy w/ Eyecups A3144310						
1 ea Wired Body Housing A3207330						
8 ea Washer A3144314						
1 ea Neck Cord A3144306						
1 ea Purge Screw A3144315						
1 ea Purge O-Ring A3144316						
1 each Objective Lens Cover A3144318						
1 ea O-Ring MS28775-044						
1 ea O-Ring MS28775-032						
2 ea Washer, Flat MS15795-802B						
1 ea Eyepiece, A3144422						
10 ea Screw, Machine MS51957-4B						
1 ea Objective Lens Assembly A3144305						
1 ea Collimator A3172531						
1 ea Sacrificial Window A3140630						
2 ea Demist Shields A3144263						
1 ea Soft Carrying Case A3187392						
Shipment 11158 Our Order 11542 Your Order 11542						
Tracking No. 961766160007588						

EXHIBIT 3

Invoice Sub-total	\$527,516.00
Freight	\$0.00
Tax	\$0.00
Invoice Total	\$527,516.00



110 Nobel Court
 Alpharetta, GA 30005
 Tel (770) 753-4403
 Fax (770) 753-4406

Invoice No. 3478

Page 1 of 1

*Shipping
 address:*

American Technologies Network Corp
 1341 San Mateo Ave
 S. San Francisco, CA 94080
 Phone: (800) 910-2862
 Fax: 650-875-0219

Ship Via: FEDEX Ground
Fob desc: ORIGIN

*Account
 address:*

American Technologies Network Corp
 1341 San Mateo Ave
 S. San Francisco, CA 94080
 Phone: (800) 910-2862
 Fax: 650-875-0219

<i>Invoice Date</i>	<i>Due Date</i>	<i>Terms</i>	<i>Salesperson</i>
3/15/2011	3/15/2011		

<i>Order Qty</i>	<i>Ship Qty</i>	<i>Part ID/Description</i>	<i>Rev</i>	<i>U/M</i>	<i>Unit Price</i>	<i>Extended Price</i>
10	10	A3256391		EA	325.00000	\$3,250.00
3X Magnifier						
Shipment 11242 Our Order 11843-2011 Your Order 11843						
Tracking No. 961766160009285						

<i>Invoice Sub-total</i>	\$3,250.00
<i>Freight</i>	\$0.00
<i>Tax</i>	\$0.00
Invoice Total	\$3,250.00

EXHIBIT 4



110 Nobel Court
 Alpharetta, GA 30005
 Tel (770) 753-4403
 Fax (770) 753-4406

Packing Slip No. 11031

Tracking No. 961766160005836

Page 1 of 1

Invoice To: American Technologies Network Corp

1341 San Mateo Ave
 S. San Francisco, CA 94080
 Phone: (800) 910-2862
 Fax: 650-875-0219

Ship To: American Technologies Network Corp

1341 San Mateo Ave
 S. San Francisco, CA 94080
 Phone: (800) 910-2862
 Fax: 650-875-0219

Ship Date 9/14/2010

Ship Via FEDEX Ground

Order Qty	Ship/BO Qty	Part ID/Description	U/M	Your Order	Our Order
500	90	CK0720	EA	11453-B	11453
	0	Rev G		FOB DESTINATION	
		PVS-7D Goggle Kit		Terms Net 30 days	
		Kit Contains:		Salesperson	
		1 ea Rear Cover Assy w/ Eyecups			
		A3144310			
		1 ea Wired Body Housing A3207330			
		8 ea Washer A3144314			
		1 ea Neck Cord A3144306			
		1 ea Purge Screw A3144315			
		1 ea Purge O-Ring A3144316			
		1 each Objective Lens Cover			
		A3144318			
		1 ea O-Ring MS28775-044			
		1 ea O-Ring MS28775-032			
		2 ea Washer, Flat MS15795-802B			
		1 ea Eyepiece, A3144422			
		10 ea Screw, Machine MS51957-4B			
		1 ea Objective Lens Assembly			
		A3144305			
		1 ea Collimator A3172531			
		1 ea Sacrificial Window A3140630			
		2 ea Demist Shields A3144263			
		1 ea Soft Carrying Case A3187392			

EXHIBIT 5

Plt / Δ Exhibit	18
Wit:	J. Munn
Date:	6-4-15
Janiell Sokol, CSR	



110 Nobel Court
Alpharetta, GA 30005
Tel (770) 753-4403
Fax (770) 753-4406

Invoice No. 3245

Page 1 of 1

*Shipping
address:*

American Technologies Network Corp
1341 San Mateo Ave
S. San Francisco, CA 94080
Phone: (800) 910-2862
Fax: 650-875-0219

Ship Via: FEDEX Ground
Fob desc: DESTINATION

*Account
address:*

American Technologies Network Corp
1341 San Mateo Ave
S. San Francisco, CA 94080
Phone: (800) 910-2862
Fax: 650-875-0219

Invoice Date	Due Date	Terms	Salesperson
9/17/2010	10/17/2010	Net 30 days	

Order Qty	Ship Qty	Part ID/Description	Rev	U/M	Unit Price	Extended Price
500	90	CK0720	G	EA	599.45000	\$53,950.50

PVS-7D Goggle Kit

Kit Contains:

1 ea Rear Cover Assy w/ Eyecups A3144310

1 ea Wired Body Housing A3207330

8 ea Washer A3144314

1 ea Neck Cord A3144306

1 ea Purge Screw A3144315

1 ea Purge O-Ring A3144316

1 each Objective Lens Cover A3144318

1 ea O-Ring MS28775-044

1 ea O-Ring MS28775-032

2 ea Washer, Flat MS15795-802B

1 ea Eyepiece, A3144422

10 ea Screw, Machine MS51957-4B

1 ea Objective Lens Assembly A3144305

1 ea Collimator A3172531

1 ea Sacrificial Window A3140630

2 ea Demist Shields A3144263

1 ea Soft Carrying Case A3187392

Shipment 11031 Our Order 11453 Your Order 11453-B

Tracking No. 961766160005836

Please note, 100 Soft Cases were shipped against Shipment ID 11031, overage of 10 Soft Cases. Shipment 11035 was short shipped 10 to equal out the difference.

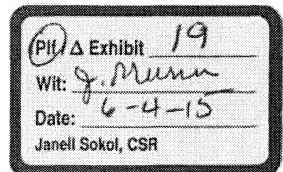


EXHIBIT 6

Invoice Sub-total	\$53,950.50
Freight	\$0.00
Tax	\$0.00
Invoice Total	\$53,950.50

AR Payments Edit List**Carson Industries Inc.****Session Settings**

Session No	Deposit Amount	Amount Cleared	Amount Remaining	Receipt Date	Year/Period
395	\$491,549.00	\$491,549.00	\$0.00	12/15/2010	2010/12

Payments and Credits

Customer ATN American Technologies Network Corp

Payment No	Payment Am	Description	Invoice	Amt Applied	Discount	Adj Amt	Tax Amt	Overpay Amt
12/15/10	\$491,549.00		3242	\$59,945.00	\$0.00	\$0.00	\$0.00	
			3245	\$53,950.50	\$0.00	\$0.00	\$0.00	
			3249	\$17,983.50	\$0.00	\$0.00	\$0.00	
			3300	\$29,972.50	\$0.00	\$0.00	\$0.00	
			3303	\$59,945.00	\$0.00	\$0.00	\$0.00	
			3306	\$28,174.15	\$0.00	\$0.00	\$0.00	
			3313	\$53,950.50	\$0.00	\$0.00	\$0.00	
			3314	\$59,945.00	\$0.00	\$0.00	\$0.00	
			3319	\$59,945.00	\$0.00	\$0.00	\$0.00	
			3320	\$67,737.85	\$0.00	\$0.00	\$0.00	
	\$491,549.00			\$491,549.00	\$0.00	\$0.00	\$0.00	\$0.00

GL Recap in Base Currency

Account	Description	Debits	Credits
001-00103-001	Wells Fargo	491,549.00	0.00
001-00110-001	Accounts Receivable	0.00	491,549.00
		491,549.00	491,549.00



110 Nobel Court
 Alpharetta, GA 30005
 Tel (770) 753-4403
 Fax (770) 753-4406

Packing Slip No. 11024

Tracking No. 442962088086

Page 1 of 1

Invoice To: American Technologies Network Corp

1341 San Mateo Ave
 S. San Francisco, CA 94080
 Phone: (800) 910-2862
 Fax: 650-875-0219

Ship To: American Technologies Network Corp

1341 San Mateo Ave
 S. San Francisco, CA 94080
 Phone: (800) 910-2862
 Fax: 650-875-0219

Ship Date 9/10/2010

Ship Via 2nd Day

Order Qty	Ship/BO Qty	Part ID/Description	U/M	Your Order	Our Order
500	100	CK0720	EA	11453-B	11453
	0	Rev G		FOB DESTINATION	
		PVS-7D Goggle Kit		Terms Net 30 days	
		Kit Contains:		Salesperson	
		1 ea Rear Cover Assy w/ Eyecups			
		A3144310			
		1 ea Wired Body Housing A3207330			
		8 ea Washer A3144314			
		1 ea Neck Cord A3144306			
		1 ea Purge Screw A3144315			
		1 ea Purge O-Ring A3144316			
		1 each Objective Lens Cover			
		A3144318			
		1 ea O-Ring MS28775-044			
		1 ea O-Ring MS28775-032			
		2 ea Washer, Flat MS15795-802B			
		1 ea Eyepiece, A3144422			
		10 ea Screw, Machine MS51957-4B			
		1 ea Objective Lens Assembly			
		A3144305			
		1 ea Collimator A3172531			
		1 ea Sacrificial Window A3140630			
		2 ea Demist Shields A3144263			
		1 ea Soft Carrying Case A3187392			

EXHIBIT 7

PII / Δ Exhibit	20
Wit:	J. Munn
Date:	6-4-15
Janell Sokol, CSR	



110 Nobel Court
Alpharetta, GA 30005
Tel (770) 753-4403
Fax (770) 753-4406

Invoice No. 3237

Page 1 of 1

*Shipping
address:*

American Technologies Network Corp
1341 San Mateo Ave
S. San Francisco, CA 94080
Phone: (800) 910-2862
Fax: 650-875-0219

Ship Via: 2nd Day
Fob desc: DESTINATION

*Account
address:*

American Technologies Network Corp
1341 San Mateo Ave
S. San Francisco, CA 94080
Phone: (800) 910-2862
Fax: 650-875-0219

Invoice Date	Due Date	Terms	Salesperson
9/10/2010	10/10/2010	Net 30 days	

Order Qty	Ship Qty	Part ID/Description	Rev	U/M	Unit Price	Extended Price
500	100	CK0720	G	EA	599.45000	\$59,945.00

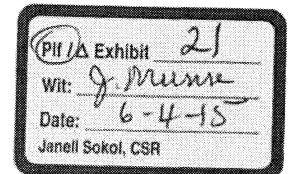
PVS-7D Goggle Kit

Kit Contains:

1 ea Rear Cover Assy w/ Eyecups A3144310
1 ea Wired Body Housing A3207330
8 ea Washer A3144314
1 ea Neck Cord A3144306
1 ea Purge Screw A3144315
1 ea Purge O-Ring A3144316
1 each Objective Lens Cover A3144318
1 ea O-Ring MS28775-044
1 ea O-Ring MS28775-032
2 ea Washer, Flat MS15795-802B
1 ea Eyepiece, A3144422
10 ea Screw, Machine MS51957-4B
1 ea Objective Lens Assembly A3144305
1 ea Collimator A3172531
1 ea Sacrificial Window A3140630
2 ea Demist Shields A3144263
1 ea Soft Carrying Case A3187392

Shipment 11024 Our Order 11453
Tracking No. 442962088086

Your Order 11453-B



Invoice Sub-total	\$59,945.00
Freight	\$0.00
Tax	\$0.00
Invoice Total	\$59,945.00

EXHIBIT 8

AR Payments Edit List**Carson Industries Inc.****Session Settings**

Session No	Deposit Amount	Amount Cleared	Amount Remaining	Receipt Date	Year/Period
363	\$676,310.00	\$676,310.00	\$0.00	10/14/2010	2010/10

Payments and Credits

Customer ATN American Technologies Network Corp

Payment No	Payment Am	Description	Invoice	Amt Applied	Discount	Adj Amt	Tax Amt	Overpay Amt
10-14-10	\$676,310.00		2811	\$18,570.00	\$0.00	\$0.00	\$0.00	
			2814	\$15,800.00	\$0.00	\$0.00	\$0.00	
			2816	\$14,856.00	\$0.00	\$0.00	\$0.00	
			2824	\$49,520.00	\$0.00	\$0.00	\$0.00	
			2838	\$30,950.00	\$0.00	\$0.00	\$0.00	
			2840	\$30,950.00	\$0.00	\$0.00	\$0.00	
			2846	\$61,900.00	\$0.00	\$0.00	\$0.00	
			2847	\$37,140.00	\$0.00	\$0.00	\$0.00	
			2850	\$37,140.00	\$0.00	\$0.00	\$0.00	
			2854	\$14,856.00	\$0.00	\$0.00	\$0.00	
			2855	\$16,094.00	\$0.00	\$0.00	\$0.00	
			2858	\$46,425.00	\$0.00	\$0.00	\$0.00	
			2891	\$108,325.00	\$0.00	\$0.00	\$0.00	
			2893	\$11,375.00	\$0.00	\$0.00	\$0.00	
			2913	\$4,333.00	\$0.00	\$0.00	\$0.00	
			3064	\$58,186.00	\$0.00	\$0.00	\$0.00	
			3236	\$59,945.00	\$0.00	\$0.00	\$0.00	
			3237	\$59,945.00	\$0.00	\$0.00	\$0.00	
	\$676,310.00			\$676,310.00	\$0.00	\$0.00	\$0.00	\$0.00

GL Recap in Base Currency

Account	Description	Debits	Credits
001-00103-001	Wells Fargo	676,310.00	0.00
001-00110-001	Accounts Receivable	0.00	676,310.00
		676,310.00	676,310.00

<u>SHIPMENTS</u>	<u>ORDER</u>	<u>PART ID</u>	<u>DESCRIPTION</u>	<u>QTY SHIPPED</u>	<u>SHIP DATE</u>	<u>TOTAL UNITS SHIPPED</u>
11174	11543	CK0720	PV S-7D Goggle Kit	500	12/28/2010 12:45 PM	3518
11158	11542	CK0720	PV S-7D Goggle Kit	880	12/15/2010 09:42 AM	
11104	11542	CK0720	PV S-7D Goggle Kit	100	10/22/2010 03:13 PM	
11101	11533	CK0720	PV S-7D Goggle Kit	93	10/21/2010 04:24 PM	
11101	11542	CK0720	PV S-7D Goggle Kit	20	10/21/2010 04:24 PM	425
11100	11533	CK0720	PV S-7D Goggle Kit	100	10/20/2010 05:27 PM	
11095	11533	CK0720	PV S-7D Goggle Kit	100	10/19/2010 04:31 PM	
11094	11533	CK0720	PV S-7D Goggle Kit	90	10/18/2010 04:26 PM	
11087	11533	CK0720	PV S-7D Goggle Kit	47	10/15/2010 04:22 PM	98
11083	11453	CK0720	PV S-7D Goggle Kit	30	10/14/2010 04:31 PM	
11083	11533	CK0720	PV S-7D Goggle Kit	70	10/14/2010 04:31 PM	
11080	11453	CK0720	PV S-7D Goggle Kit	50	10/13/2010 03:29 PM	
11035	11453	CK0720	PV S-7D Goggle Kit	30	09/15/2010 03:46 PM	TOTAL RMA(S) SHIPPED
11031	11453	CK0720	PV S-7D Goggle Kit	90	09/14/2010 03:07 PM	
11028	11453	CK0720	PV S-7D Goggle Kit	100	09/13/2010 04:38 PM	
11024	11453	CK0720	PV S-7D Goggle Kit	100	09/10/2010 02:38 PM	
11023	11453	CK0720	PV S-7D Goggle Kit	100	09/09/2010 03:54 PM	TOTAL RMA(S) RETURNED
10871	11122	CK0720	PV S-7D Goggle Kit	94	06/01/2010 03:48 PM	
10828	11122	CK0720	PV S-7D Goggle Kit	125	04/30/2010 02:56 PM	
10734	11122	CK0720	PV S-7D Goggle Kit	3	03/08/2010 12:07 PM	
10733	11122	CK0720	PV S-7D Goggle Kit	7	03/08/2010 02:51 PM	TOTAL RMA(S) SHIPPED
10712	11122	CK0720	PV S-7D Goggle Kit	175	02/24/2010 01:54 PM	
10686	11122	CK0720	PV S-7D Goggle Kit	75	02/08/2010 03:28 PM	
10683	11122	CK0720	PV S-7D Goggle Kit	26	02/05/2010 03:25 PM	
10682	11121	CK0720	PV S-7D Goggle Kit	24	02/05/2010 03:18 PM	TOTAL RMA(S) RETURNED
10680	11121	CK0720	PV S-7D Goggle Kit	60	02/04/2010 03:30 PM	
10677	11121	CK0720	PV S-7D Goggle Kit	60	02/03/2010 02:45 PM	
10676	11121	CK0720	PV S-7D Goggle Kit	100	02/02/2010 02:56 PM	
10670	11121	CK0720	PV S-7D Goggle Kit	50	01/28/2010 04:10 PM	TOTAL RMA(S) SHIPPED
10669	11121	CK0720	PV S-7D Goggle Kit	50	01/29/2010 02:42 PM	
10657	11121	CK0720	PV S-7D Goggle Kit	80	01/21/2010 02:36 PM	
10650	11121	CK0720	PV S-7D Goggle Kit	24	01/19/2010 02:50 PM	
10648	11121	CK0720	PV S-7D Goggle Kit	25	01/18/2010 03:17 PM	TOTAL RMA(S) RETURNED
10645	11121	CK0720	PV S-7D Goggle Kit	30	01/15/2010 03:56 PM	
10622	11120	CK0720	PV S-7D Goggle Kit	10	01/05/2010 03:48 PM	

EXHIBIT 9

<u>RMA SHIPMENTS</u>	<u>ORDER</u>	<u>PART ID</u>	<u>DESCRIPTION</u>	<u>QTY SHIPPED</u>	<u>SHIP DATE</u>
11314	RMA10090	CK0720	PVS-7D Goggle Kit	10	06/03/2011 01:38 PM
11276	RMA10088	CK0720	PVS-7D Goggle Kit	10	04/18/2011 04:27 PM
10933	RMA10054	CK0720	PVS-7D Goggle Kit	78	07/13/2010 03:25 PM

<u>RMA RECEIPTS</u>	<u>RMA ID</u>	<u>PART ID</u>	<u>DESCRIPTION</u>	<u>QTY RECEIVED</u>	<u>RECEIPT DATE</u>
10077	10098	CK0720	PVS-7D GOGGLE KIT	100	07/20/2011 12:00 AM
10072	10071	CK0720	PVS-7D GOGGLE KIT	36	06/17/2011 08:29 AM
10072	10092	CK0720	PVS-7D GOGGLE KIT	150	06/17/2011 08:29 AM
10072	10095	CK0720	PVS-7D GOGGLE KIT	41	06/17/2011 08:29 AM
10068	10090	CK0720	PVS-7D GOGGLE KIT	10	05/02/2011 02:57 PM
10066	10088	CK0720	PVS-7D GOGGLE KIT	10	04/12/2011 03:28 PM
10039	10054	CK0720	PVS-7D GOGGLE KIT	78	07/12/2010 09:23 AM

EXHIBIT 14

James Munn

From: Cathy Rogers [cathy.rogers@carson-industries.com]
Sent: Wednesday, January 05, 2011 12:11 PM
To: jmunnn@atncorp.com
Subject: New Shipping Address
Attachments: Shipping Address_.doc

10 531



July 2, 2014

Dear James:

We at Carson Industries are proud to announce that we are moving to Alpharetta, GA January 12, 2011. **Please hold all shipments until Monday, January 24th. Shipments received after January 7th will be returned to the sender.**

Shipping Address:

Carson Industries, Inc.
110 Nobel Court
Alpharetta, GA 30005

During the move, the landline phones will be unavailable. Please contact Dennis Latora with any questions (404) 550-4637.

Thank you,

Cathy Rogers

Carson Industries
110 Nobel Court
Alpharetta, GA 30005
cathy.rogers@carson-industries.com

10 532

EXHIBIT 15

1 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
A Limited Liability Partnership
2 Including Professional Corporations
PAUL S. MALINGAGIO, Cal. Bar No. 90451
3 DAVID A. DEGROOT, Cal. Bar No. 168073
Four Embarcadero Center, 17th Floor
4 San Francisco, California 94111-4109
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5 Facsimile: 415.434.3947

6 Attorneys for Plaintiff
CARSON INDUSTRIES, INC.
7

8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN FRANCISCO DIVISION**
11

12 CARSON INDUSTRIES, INC., a South
Carolina corporation,

13 Plaintiff,
14

15 v.

16 AMERICAN TECHNOLOGY NETWORK,
CORP., a California corporation, dba
American Technologies Network, American
17 Technologies Network, Corp., and ATN Corp.,

18 Defendant.
19
20
21
22
23
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25
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28

Case No. 3:14-cv-01769-NC

**PLAINTIFF CARSON INDUSTRIES
INC.'S MOTION FOR SUMMARY
ADJUDICATION**

Hrg. Date: September 2, 2015
Time: 1 pm
Ct rm: D, 15th Fl.,
Location: 450 Golden Gate Ave.
San Francisco, CA

1 TO DEFENDANT AMERICAN TECHNOLOGY NETWORK CORP. (“ATN” or
2 “Defendant”) AND ITS ATTORNEY OF RECORD:

3 **Notice of Motion:** Please take note that plaintiff Carson Industries, Inc. (“Carson”
4 or “Plaintiff”) will and hereby does move for summary adjudication, as indicated below. Said
5 motion will be heard on September 2, 2015 at 1 pm, or as soon thereafter as it may be heard, at the
6 United States District Court for the Northern District of California, 450 Golden Gate Ave.,
7 Courtroom D, 15th Floor, San Francisco, CA, the Honorable Nathanael Cousins presiding. The
8 motion will be based on this notice of motion and motion, the memorandum of points and
9 authorities, the accompanying declarations, the argument of counsel, and all of the papers on file
10 in this action.

11 **Motion:** Pursuant to Federal Rule of Civil Procedure 56 and Local Rules 7 and 56,
12 Carson moves for summary adjudication of the following three issues: (1) ATN’s liability for 463
13 units of PVS-7D night vision goggle kits at the unit price of \$599.45 (\$277,545.35 subtotal) and
14 10 units of PVS 3x series afocal lenses at the unit price of \$325.00 (\$3,250 subtotal), for a total
15 liability of \$280,795.35 on said units, plus applicable interest, on the ground that these units were
16 ordered by ATN, delivered by Carson, accepted by ATN, and said acceptance was never revoked;
17 (2) ATN’s liability for an additional 90 units of PVS-7D goggle kits at the unit price of \$599.45,
18 for a total liability of \$53,950.50, plus applicable interest, on the ground that these units were
19 ordered by ATN, delivered by Carson, accepted by ATN, and said acceptance was never revoked;
20 and (3) ATN’s liability for unreturned portions of 327 units of PVS-7D goggle kits, on the ground
21 that it failed to return other portions of those kits.

22 **MEMORANDUM OF POINTS AND AUTHORITIES**

23 **I. INTRODUCTION AND SUMMARY OF ARGUMENT**

24 Carson sold night vision goggle kits to ATN. It delivered 880 units in late 2010,
25 pursuant to a purchase order from ATN. ATN accepted those units, never revoked its acceptance
26 and, except for a progress payment of \$50,000 in early 2012, has not paid for these units.

27 ATN makes various wild assertions to overcome these basic facts, like asserting
28 that all 880 units were defective. These assertions beg the question of why ATN simply didn’t

1 return the units. It made some partial returns during 2011. It had alternative sources for the same
 2 products, including one source that, according to ATN, replaced units for less than half of
 3 Carson's price. ATN instead decided to use Carson's products, and not pay for them.

4 Under the Uniform Commercial Code, a buyer cannot accept products and not pay
 5 for them. A buyer may revoke acceptance under certain circumstances, but must at a minimum
 6 communicate that revocation to the seller. Here, ATN not only failed to communicate any
 7 revocation, it did the opposite by making a progress payment of \$50,000 to Carson. Thus, the
 8 Court can grant Carson's motion even if it assumes that ATN's far-fetched tale is true, because it
 9 is undisputed that ATN accepted Carson's deliveries and never revoked its acceptance.

10 **II. BACKGROUND FACTS**

11 **The Orders and The Deliveries:** Carson sells components for night vision sights
 12 and goggles. ATN placed orders with Plaintiff for components in 2010 and 2011. In addition to
 13 other purchase orders, ATN ordered 1000 PVS-7D goggle kits, item no. CK0720, by its purchase
 14 order number 11542, dated July 28, 2010. Declaration of Richard J. Barrett ("Barrett Decl."), ¶ 3
 15 and Ex. 1. ATN also ordered 10 PVS series 3x Afocal lenses, item no. A3256391, by its purchase
 16 order number 11843, dated March 11, 2011. Barrett Decl., Ex. 2. Carson shipped goods for
 17 purchase order 11542 to ATN on or about October 21, 2010 (20 units), October 22, 2010 (100
 18 units), and December 15, 2010 (880 units). *Id.*, ¶ 3 and Ex. 9. Plaintiff invoiced ATN for
 19 \$527,516 on December 17, 2010, invoice number 3402, for the December 15, 2010 shipment of
 20 goods for purchase order 11542. *Id.*, Ex. 3. Plaintiff shipped goods for purchase order 11843 on or
 21 about March 14, 2011. *Id.*, ¶ 3 and Ex. 9. Plaintiff invoiced ATN for \$3,250 on March 15, 2011,
 22 invoice number 3478, for purchase order 11843. *Id.*, Ex. 4. ATN paid \$50,000 toward outstanding
 23 balances in February 2012 and Carson credited \$75,778.98 to ATN for returns of components
 24 from 327 other kits, for a net obligation of \$404,987.02. Barrett Decl., ¶ 3.

25 Carson also shipped, among other units, two shipments of 100 and 90 kits,
 26 respectively, in September 2010. Barrett Decl., ¶ 4 and Exs. 5, 7. ATN paid the invoices for these
 27
 28

1 shipments. *Id.*, Exs. 6, 8 (invoices and payment records).¹ ATN acknowledges that it “irrevocably
2 accepted” units it received from Carson. DeGroot Decl., Ex. 2 at 8:24, ¶ 22 (ATN’s answer).

3 **ATN’s Returns:** ATN claimed that some of Carson’s shipment of 880 units had
4 double-vision issues. It made partial returns of 425 units, of which Carson returned 98 units to
5 ATN, for net returns of 327 units. Barrett Decl., Ex. 9. Contemporary correspondence confirms
6 Carson’s return figures. DeGroot Decl., Exs. 3, 4 (email summarizing returns) and Ex. 1 at 32:2-
7 34:2, 35:6-13 (testimony of ATN 30(b)(6) representative James Munn).

8 **ATN’s Alleged Repairs Coincide With A \$50,000 Progress Payment:** In early
9 2012, ATN still had not paid its outstanding invoices. Personnel from Carson and ATN met during
10 a convention in Las Vegas to discuss the status of these invoices. DeGroot Decl., Ex. 5 (email
11 from Carson to ATN’s Munn with summary of ATN’s account with Carson attached). In further
12 correspondence with Carson personnel, Munn described positive discussions with the only
13 question being the unit count:

14 We are reviewing the info and will try to net out the amount owed
15 and make sure everything matches. [¶] In a sign of good faith we are
sending out a check for 50k while we are sorting out the numbers.

16 DeGroot Decl., Ex. 1 at 52:8-25 and Ex. 6. ATN made a \$50,000 payment in February 2012.
17 DeGroot Decl., Ex. 1 at 52:17-21.

18 ATN now claims it was seeking repair or replacement of 920 kits by Hitek
19 International. DeGroot Decl., Ex. 1 at 134:16-24 and Ex. 7 (Hitek invoices dated from Dec. 2011
20 to March 2012). ATN did not inform Carson of any third-party work on these kits. *Id.*, Ex. 1 at
21 43:17-19, 51:1-7. ATN’s Chief Operating Officer, James Munn, provided the following testimony
22 on the reasons that ATN neither asked to return kits to Carson nor told Carson it was going to have
23 the kits allegedly repaired at Carson’s expense:

24 ¹ ATN has asserted that it did not receive one shipment of 90 units. *See* DeGroot Decl., Ex.
25 1 at 90:22-91:22 (examination of J. Munn re allegedly missing shipment of 90 units). The
26 fact that ATN paid for the two shipments identified by ATN as part of an alleged mixup
27 (Barrett Decl., Exs. 6, 8) shows that there is no material dispute regarding ATN’s receipt of
28 the 90 units in question. Carson has divided its motion regarding the 553 units ATN
received into 463 units not subject to ATN’s “90 missing units” assertion (Issue #1) and
the 90 additional units that ATN both received and paid for (Issue #2).

1 Q. Okay. Did you raise the topic of sending back units with which you weren't satisfied?

2 A. No.

3 Q. Did you mention the possibility of sending units that you had problems with to a third party vendor?

4 A. No.

5 Q. And at that point were you contemplating sending units out to a third party vendor?

6 A. Yes.

7 Q. And was there a reason that you didn't mention then that you were contemplating sending units out to a third party vendor?

8 A. When we were contemplating litigation against them at the time and with discussions through Mr. Morgovsky and his discussion through Mr. Hartford, you know, he basically told us not to at the moment.

9 Q. Not to what?

10 A. Not to bring this up.

11 Q. So is it your testimony that in early 2012, ATN was contemplating litigation and contemplating repairs to units that had been supplied by Carson -- . . .

12 It's your testimony that you were contemplating litigation against Carson in January 2012?

13 A. Yes.

14 Q. And what would be the grounds for that? What were the grounds for litigation in your mind at that time?

15 A. The fact that we had so many defects in the units.

16 Q. And what would your -- and was there anything preventing you from simply returning the units and not paying for them?

17 A. Well, at the point, you know, we needed units and it seemed to make sense at the time to have them repaired and use them.

18 Q. And did you expect that Carson would pay for those repairs?

19 A. I would believe so, yes.

20 Q. And did you mention to Carson at any time that you would expect them to -- that any further payments that would be forthcoming from ATN would be net of any repair costs that --

21 A. Not at that time, no.

22 Q. Okay. Did you ever tell them that before litigation was actually commenced?

23 A. No.

24 DeGroot Decl., Ex. 1 at 43:14-45:9.

25 ATN's only record of the work allegedly done by Hitek is three single-page invoices for work allegedly totaling \$230,000. *Id.*, Ex. 7. According to ATN, some of the 920 units were replaced by Hitek at a cost of \$250 per unit. DeGroot Decl., Ex. 1 at 138:15-140:5, Ex. 7 (invoices). ATN has not explained why it did not return Carson's units and replace them with different kits it could apparently obtain at less than half the cost of Carson's.

26 ATN's only explanation for not informing Carson of its sending Carson units for repair or replacement by a third party was advice it received from its attorney, John Hartford, and

1 Naum Morgovsky², who advised ATN that ATN should not tell Carson anything. *Id.*, Ex. 1 at
 2 112:1-113:5. ATN was never told it could not return units. *Id.*, Ex. 1 at 118:25-119:10. Rather
 3 than revoke its acceptance, it paid \$50,000 on the outstanding invoices in February 2012. DeGroot
 4 Decl., Ex. 1 at 52:17-21. ATN does not know if it responded to further inquiry from Carson in
 5 June 2012 with regard to the remaining balance. DeGroot Decl., Ex. 9 (June 2012 email inquiry),
 6 Ex.1 at 58:22-59:13.

7 **III. ARGUMENT**

8 **A. The Summary Adjudication Standard and the Burden of Proof**

9 Summary judgment is appropriate when there is no genuine issue as to any material
 10 fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); *Celotex*
 11 *Corp. v. Catrett*, 477 U.S. 317, 322 (1986). A fact is “material” when, under the governing
 12 substantive law, it could affect the outcome of the case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S.
 13 242, 248 (1986); *Freeman v. Arpaio*, 125 F.3d 732, 735 (9th Cir. 1997) overruled on other
 14 grounds *Shakur v. Schriro*, 514 F.3d 878 (9th Cir. 2008). A dispute about a material fact is
 15 “genuine” if “the evidence is such that a reasonable jury could return a verdict for the nonmoving
 16 party.” *Anderson*, 477 U.S. at 248. When making this determination, all inferences drawn from
 17 the underlying facts must be viewed in the light most favorable to the nonmoving party. *See*
 18 *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

19 A party seeking summary judgment always bears the initial burden of establishing
 20 the absence of a genuine issue of material fact. *Celotex*, 477 U.S. at 323. Once the moving party
 21 meets this initial burden, however, the burden shifts to the non-moving party to “go beyond the
 22 pleadings and by her own affidavits, or by ‘the depositions, answers to interrogatories, and
 23 admissions on file,’ designate ‘specific facts showing that there is a genuine issue for trial.’”

24 ² Mr. Morgovsky is quite involved in this dispute. He apparently does business as Hitek
 25 International, which is not apparently a corporation. DeGroot Decl., ¶ 9. He has identified
 26 himself as Mr. Hartford’s “assistant” on this matter and Mr. Hartford uses Mr.
 27 Morgovsky’s address as his mailing address for this case. *Id.* Mr. Hartford demands that
 28 any emails to him be accompanied by a call to the number listed on his pleadings that Mr.
 Morgovsky answers. *Id.* Mr. Morgovsky is also a registered California vexatious litigant.
Id., Ex. 8 (<http://www.courts.ca.gov/documents/vexlit.pdf> at 39).

1 *Celotex*, 477 U.S. at 324 (quoting Fed. R. Civ. P. 56(e)). Defendant cannot defeat summary
 2 judgment by merely demonstrating “that there is some metaphysical doubt as to the material
 3 facts.” *Matsushita Elec. Indus. Co.*, 475 U.S. at 586; *Triton Energy Corp. v. Square D Co.*, 68 F.3d
 4 1216, 1221 (9th Cir. 1995). Rather, Defendant must present affidavits or other evidence which
 5 identify specific facts supporting its claim. “Mere allegation and speculation do not create a
 6 factual dispute for purposes of summary judgment.” *Nelson v. Pima Community College*, 83 F.3d
 7 1075, 1081-82 (9th Cir. 1996).

8 **B. ATN Breached the Contract**

9 ATN breached its contract with Carson by accepting the kits at issue, not revoking
 10 that acceptance, and then failing to pay for those kits pursuant to the written invoices. If the goods
 11 or the tender of delivery fail in any respect to conform to the contract, the buyer may either reject
 12 the whole, accept the whole, or accept any commercial unit or units and reject the rest. Cal. Com.
 13 Code § 2601. A buyer must pay at the contract rate for any goods accepted. § 2607(1). Thus, if
 14 ATN accepted the kits at issue and did not revoke its acceptance, then ATN is liable for the
 15 contract price of those kits and breached the contract by refusing to pay for them.

16 **1. ATN Accepted the Kits**

17 A buyer is deemed to have accepted the goods if he fails to effectively reject the
 18 goods after having a reasonable opportunity to inspect them. Cal. Com. Code § 2606(1)(b).
 19 Rejection will not be effective unless the buyer seasonably notifies the seller. § 2602(1).

20 ATN accepted the 553 kits that it did not partially return. Instead, ATN eventually
 21 paid Carson \$50,000 of what it owed to show its good faith. DeGroot Decl., Ex. 1 at 52:17-21 and
 22 Ex. 6. Contemporaneous with this payment, it did not tell Carson that it was (allegedly) sending
 23 kits to a third-party for repair or that it expected that Carson would be liable for the cost of that
 24 repair. DeGroot Decl., Ex. 1 at 43:14-45:9. ATN’s Munn also admitted that ATN never informed
 25 Carson that it was no longer going to pay on the invoices. DeGroot Decl., Ex. 1 at 121:21-23.
 26 According to the official comments to Uniform Commercial Code section 2606, a payment like
 27 ATN’s \$50,000 payment confirms continuing acceptance of goods. *See* DeGroot Decl., Ex. 10 at 2
 28 (Official Comment 3 to UCC § 2606).

1 Alternatively, ATN also accepted the kits when it had them repaired by a third-party and
 2 sold them to customers. “Acceptance of goods occurs when the buyer does any act inconsistent
 3 with the seller's ownership.” Cal. Com. Code § 2606(c). Selling goods for consideration is an act
 4 of ownership and acceptance. *Gladium Co. v. Thatcher*, 95 Cal. App. 85, 90-91 (1928) (holding
 5 that “[r]etaining the property or conveying it for a consideration are acts indicating that he treated
 6 the property as his own, and would amount to an acceptance which would make the respondent
 7 liable for their value.”). Repairing or modifying goods, even goods that the buyer claims are
 8 defective, without the consent of the seller, is also deemed an act of acceptance. *Mardikian v.*
 9 *Parador Min. Co.*, 192 Cal. App. 2d 747, 750 (1961) (holding that where buyer modified the
 10 height of the purchased tractor without the consent of the seller, the tractor was accepted by the
 11 buyer); *Reininger v. Eldon Mfg. Co.*, 114 Cal. App. 2d 240, 241 (1952) (holding there was no
 12 question that the seller was entitled to the balance of the contract price where the buyer notified
 13 the seller that the goods were defective, kept the goods, and exercised dominion over them by
 14 attempting to rework them). ATN admitted that it sent the kits at issue to a third-party for repair
 15 without informing Carson or notifying Carson that it would expect Carson to cover the repair
 16 costs. DeGroot Decl., Ex. 1 at 43:14-45:9, 56:11-23 and Ex. 7. Thus, regardless of ATN’s claims
 17 that the kits were defective, ATN accepted the kits under section 2606(c).

18 2. ATN Never Revoked Its Acceptance

19 ATN also had the option of revoking its acceptance of the kits, but never exercised
 20 that option. Revocation will not be effective until the buyer actually notifies the seller. Cal. Com.
 21 Code § 2608(2). The revoking buyer must notify the seller of its intent to revoke acceptance. *See,*
 22 *e.g., U.S. Roofing, Inc. v. Credit Alliance Corp.*, 228 Cal. App. 3d 1431, 1439 (1991); *S & R*
 23 *Metals, Inc. v. C. Itoh & Co. (Am.)*, 859 F.2d 814, 815 (9th Cir. 1988); *CPC Int’l, Inc.*, 660 F.
 24 Supp. at 1514.

25 ATN admittedly never revoked its acceptance. Although ATN contends that it
 26 “felt” it could not return the kits to Carson, Mr. Munn admitted that ATN never asked Carson if
 27 they could return the kits and that Carson never gave any indication that they would not accept a
 28 return of the remaining kits. DeGroot Decl., Ex. 1 at 118:14-120:14. Furthermore, ATN had

1 made partial returns of some kits, so ATN knew it had the option to revoke its acceptance of the
 2 kits. Because ATN accepted the 553 kits and never revoked its acceptance, ATN is liable for the
 3 contract price of those kits and breached the contract by refusing to pay for them.

4 **C. Issue #1 – There Is No Dispute That ATN Is Liable To Pay For 463 Kits It Accepted**
 5 **From Carson**

6 Of the 880 PVS-7D kits and 10 PVS series 3x Afocal lenses at issue, ATN received
 7 and did not return 463 PVS-7D kits and all 10 lenses. *See* Section II.A and II.B, above. The
 8 contract price for the PVS-7D goggle kits is \$599.45 and the contract price for the lenses is
 9 \$325.00. *Id.* Because ATN accepted these units and neither revoked its acceptance of the them or
 10 returned them, it is liable for a total of \$280,795.35. Carson requests that the Court grant Carson's
 11 motion for summary adjudication as to Issue #1.

12 **D. Issue #2 – There Is No Material Dispute That ATN Is Liable To Pay For An**
 13 **Additional 90 Kits It Accepted From Carson**

14 ATN has contended that it did not receive 90 kits that Carson's records show were
 15 shipped. *See* Section II.A and II.B, above. ATN bases its position on alleged confusion over two
 16 shipments made by Carson, one of 100 units and another of 90 units. ATN's Munn claimed that
 17 ATN did not pay for 190 units because it only received 100, not 190, between these two invoices.
 18 DeGroot Decl., Ex. 1 at 12:21-13:15.

19 There is no material dispute regarding this issue because ATN paid for both of the
 20 shipments in questions. Barrett Decl., Exs. 5-8 (packing slips, invoices and payment records for
 21 the 190 units in question). ATN's payments show there is no material dispute regardless of ATN's
 22 current assertion that it did not receive 90 kits. Thus, Carson requests that the Court grant
 23 summary adjudication of Issue #2 and find ATN liable for an additional 90 PVS-7D kits totaling
 24 \$53,950.50.

E. Issue #3 – ATN Is Liable For Those Portions of Kits Where Only Some Components Were Returned

Finally, ATN is liable for those portions of PVS-7D kits that it did not return. ATN made partial returns of 327 kits, net.³ Barrett Decl., Ex. 9. ATN has been given a credit of \$75,778.98 for those components that it did return. Barrett Decl., ¶ 3. Carson requests that the Court grant its motion for summary adjudication as to Issue #3 regarding ATN's liability for those components that it did not return from kits ATN partially returned. The amount of Carson's damages would be determined at trial.

IV. CONCLUSION

For the foregoing reasons, Carson requests that its motion for summary adjudication be granted.

Dated: July 24, 2015

Respectfully submitted,

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By /s/ David A. DeGroot
DAVID A. DeGROOT
Attorneys for Plaintiff
CARSON INDUSTRIES, INC.

³ ATN's contention that it made more returns is simply a double-counting error by ATN. DeGroot Decl., Ex. 1 at 87:25-88:25. Carson provided contemporaneous figures of ATN's returns. DeGroot Decl., Ex. 3. ATN never questioned these figures.

EXHIBIT 16

PO Number	Item	Description	Bin	Req Date	Qty Recd	Trn Unit	Recd Value	Account
Vendor	Vendor P/N	U/M		Rec Date				
Location: SANMAT								
** Purchase Order => 11120								
11120	COBDPVS7	EACH	Body: PVS-7, w/ Nylon Case, Accessories Pack, &	10/29/09	10		8840.00	114101
CARSIN	CK0720		CA13A	01/13/10				
					Subtotal:	10	8840.00	
** Purchase Order => 11121								
11121	COBDPVS7	EACH	Body: PVS-7, w/ Nylon Case, Accessories Pack, &	11/20/09	498		339072.00	114101
CARSIN	CK0720		CA13A	02/08/10				
					Subtotal:	498	339072.00	
** Purchase Order => 11122								
11122	COBDPVS7	EACH	Body: PVS-7, w/ Nylon Case, Accessories Pack, &	01/20/10	502		343368.00	114101
CARSIN	CK0720		CA13A	06/11/10				
					Subtotal:	502	343368.00	
** Purchase Order => 11266								
11266	COBDPVS7	EACH	error in receiv 2/8/10 po 11121	02/08/10	-28		-17784.00	114101
CARSIN	CK0720		CA13A	02/08/10				
					Subtotal:	-28	-17784.00	
** Purchase Order => 11268								
11268	COBDPVS7	EACH	error po 11266	02/08/10	26		18064.00	114101
CARSIN	CK0720		CA13A	02/08/10				
					Subtotal:	26	18064.00	
** Purchase Order => 11453								
11453	COBDPVS7	EACH	Body: PVS-7, w/ Nylon Case, Accessories Pack / no	08/10/10	410		245774.50	114101
CARSIN	CK0720		CA13A	01/05/11				
					Subtotal:	410	245774.50	
** Purchase Order => 11508								
11508	COBDPVS7	EACH	Body: PVS-7, w/ Nylon Case, Accessories Pack, (no	07/08/10	-78		-50854.28	114101
CARSIN	CK0720		CA13A	07/08/10				
					Subtotal:	-78	-50854.28	
** Purchase Order => 11528								
11528	COBDPVS7	EACH	Body: PVS-7, w/ Nylon Case, Accessories Pack, (no	07/19/10	78		48262.00	114101
CARSIN	CK0720		CA13A	07/19/10				
					Subtotal:	78	48262.00	
** Purchase Order => 11533								
11533	COBDPVS7	EACH	Body: PVS-7, w/ Nylon Case, Accessories Pack, (no	08/30/10	500		299725.00	114101
CARSIN	CK0720		CA13A	10/22/10				
					Subtotal:	500	299725.00	
** Purchase Order => 11542								
11542	COBDPVS7	EACH	Body: PVS-7, w/ Nylon Case, Accessories Pack, (no	08/28/10	1000		599450.00	114101
CARSIN	CK0720		CA13A	12/30/10				
					Subtotal:	1000	599450.00	
** Purchase Order => 11543								

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American Technologies Network Corp.
Detail Purchase Order Receipts
Current and History File Ordered by PO Number
Vendor = CARSIN After 03/01/09

PO Number	Item		Description	Qty	Req Date	Qty Recd	Recd Value	Account
Vendor	Vendor P/N	U/M	Bin		Rec Date	Trn Unit		
** Purchase Order => 11543								
11543	COBDPVS7	EACH	Body: PVS-7, w/ Nylon Case, Accessories Pack, (no		12/28/10	500	299725.00	114101
CARSIN	CK0720		CA13A		01/05/11			
Subtotal:						500	299725.00	
** Purchase Order => 11738								
11738	COBDPVS7	EACH	Body: PVS-7, w/ Nylon Case, Accessories Pack, (no		12/08/10	-36	-21531.02	114101
CARSIN	CK0720		CA13A		12/08/10			
Subtotal:						-36	-21531.02	
** Purchase Order => 11843								
11843	ACMPVPVSL3A	EACH	PVS Series 3x Afocal Lens		03/11/11	10	3250.00	114901
CARSIN	A3256391		TJ11A CA23A		03/22/11			
Subtotal:						10	3250.00	
** Purchase Order => 11893								
11893	COBDPVS7	EACH	Body: PVS-7, w/ Nylon Case, Accessories Pack, (no		04/21/11	-10	-5995.72	114101
CARSIN	CK0720		CC11A CA13A		04/21/11			
Subtotal:						-10	-5995.72	
** Purchase Order => 11943								
11943	COBDPVS7	EACH	Body: PVS-7, w/ Nylon Case, Accessories Pack, (no		06/03/11	-242	-145066.90	114101
CARSIN	CK0720		CA14A CA13A		06/03/11			
Subtotal:						-242	-145066.90	
** Purchase Order => 12007								
12007	COBDPVS7	EACH	Body: PVS-7, w/ Nylon Case, Accessories Pack, &		07/18/11	-100	-81900.00	114101
CARSIN	CK0720		CA14A CA13A		07/25/11			
Subtotal:						-100	-81900.00	
** Purchase Order => 12275								
12275	COBDPVS7	EACH	Body: PVS-7, w/ Nylon Case, Accessories Pack, &		02/09/12	-41	-25379.00	114101
CARSIN	CK0720		CA13A		02/10/12			
Subtotal:						-41	-25379.00	
Location: SANMAT						Subtotal:	3001	1973089.58
						Report Total:	3001	1973089.58

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